

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MBARARA**  
**HCT-05-CV-CR-0033-2011**  
**(ARISING FROM MBR-00-CV-CS-006/2011)**

**BUSINGYE JAMIYA** ..... **APPLICANT**

**VS**

**MWEBAZE ABDU & ANOTHER.** ..... **RESPONDENTS**

**BEFORE: THE HON. JUSTICE MR. BASHAIJA K. ANDREW**

**RULING**

This matter was placed before me through the Assistant Registrar from the Chief Magistrate’s Court- Mbarara for revision Orders and/or further directions.

The background facts are that one Abdu Mwebaze (hereinafter referred to as the “1<sup>st</sup> Defendant”) bought a piece of land from Swaibu Ashaba (hereinafter referred to as the “2<sup>nd</sup> Defendant”) who is the husband of Jamiya Busingye (the Plaintiff). This was sometime in February 1999. The agreed purchase price was shs. 1,700,000=, and the transaction was concluded without the consent of the Plaintiff. She instituted a case against both Defendants in Bukiro LCI Court which decided the matter in favour of the 1<sup>st</sup> Defendant.

In 2004, the Plaintiff filed a fresh suit over the same matter in Mbarara Land Tribunal. The Land Tribunal was disbanded before it could hear and determine the matter, which was then transferred to the Chief Magistrate’s Court at Mbarara. In the said Magistrate’s court, the Plaintiff proposed to refund the purchase price to the 1<sup>st</sup> Defendant with interest; all amounting to shs. 3,740,000=. An agreement to that effect was made and filed before a Magistrate Grade One, Ms. Ruth Nabasa. It appears that the Plaintiff only managed to deposit Shs. 1,700,000= in court, after which she did not make any further deposit.

In 2008, the 1<sup>st</sup> Defendant applied to the Chief Magistrate for the execution of the earlier judgment of the LCI Court. His Worship Rwatooro Baker, the then to the Chief Magistrate granted the consent, and the 1<sup>st</sup> Defendant was put in vacant possession of the now disputed piece of land.

In June 2010, the same matter came before the Chief Magistrate, Her Worship Esta Nambayo. She ruled that since a substantial amount of Shs. 1,700,000= had been deposited in court by the Plaintiff, which was the purchase price, the Plaintiff should have been left to stay on the land where; according to the Chief Magistrate, the Plaintiff was residing with her children. Further, the Chief Magistrate made a finding to the effect that it was wrong for her predecessor to have made any reference to the earlier LCI Court's judgment and given it effect when, in fact, the said LCI had no jurisdiction to hear and entertain the matter. As a result, the Chief Magistrate, Ms Esta Nambayo, granted an order to the effect that the Plaintiff and her children should stay on the land pending the final determination of the case. In January 2011, she further issued a warrant to a Court Bailiff to put the Plaintiff into vacant possession. It is out of this latest order of the Chief Magistrate, Ms Esta Nambayo, that the complaint was lodged for the revision orders. I will determine the points arising from the facts in the chronological order in which they transpired.

Firstly, the LCI court at Bukiro which decided the matter in favour of the 1<sup>st</sup> Defendant lacked the necessary jurisdiction to hear and determine the matter. **Section 10** of the **Local Council Courts Act, 2006**, which vests LC Courts with jurisdiction, states that:-

- (i) Subject to the provisions of this Act and any other written law, every local council Court shall have jurisdiction for the trial and determination of -**
  - (a) causes and matters of a civil nature specified in the second schedule to this Act';**
  - (b) causes and matters of a civil nature governed by customary law specified in the third schedule;**
  - (c) .....**

- (d) .....
- (e) .....

(ii) ***In any suit relating to causes and matters specified in the second and third schedules-***

***(a) the jurisdiction of local council courts shall, in respect of causes and matters specified in the second schedule be restricted to causes and matters where the value of the subject matter in dispute does not exceed one hundred currency points;***

***(b) the jurisdiction of the court in respect of causes and matters specified in the third schedule should not be restricted by monetary value of the subject matter”.***

**Section 11 (Supra)** requires that every suit shall be instituted in the first instance in a village Local Council Court, if that court has jurisdiction in the matter, within the area of whose jurisdiction the Defendant resides or where the cause of action arose, or in case of immovable property, where the property is situated. The question that begs the answer is whether or not given the above provisions of the law, the Local Council Court I are courts of first instance; or whether or not the LCI Court (*read “village Court”*) has jurisdiction over land disputes of a civil customary nature. It is called for to delve into depth to analyze the law and its legal implications on these points.

**The Local Council Courts Act, (Act No13 of 2006)** came into effect on 8/06/2006. **Under Section 50 (1)** thereof, it repealed the **Executive Committees (Judicial Powers) Act. Section 10 of the Local Council Act** which provides for “*Legal Jurisdiction*”, particularly **paragraph (b) of subsection (1)** thereof, is couched in almost similar words as **Section 5 (1) (b)** of the repealed **Executive Committee (Judicial Powers) Act. Section 5(1) (b) (supra)** made reference to the Second Schedule to that **Act (Cap 8)**; while **Section10 (1) (b)** of the **Local Council Courts Act** makes reference to the Third Schedule which was made under **Section 5 of Cap 8** and stated as follows:-

***“Civil disputes governed by customary law triable by executive committee courts.”***

Its first item was:-

***“Land disputes relating to customary tenure.”***

Therefore, it would appear correct, in my view, to state that the ***Local Council Courts Act, 2006*** re-enacted, with minor modification, the above provisions which were also contained in the ***Executive Committee (Judicial Power) Act (Cap 8)*** (now repealed). ***Section 10 (1) (e)*** of the ***Local Council Act, 2006*** has now added ***“matters relating to Land”*** to the list of items over which ***“every local council court”*** has jurisdiction for trial and determination. The phrase ***“every local council court”*** includes a village Local Council Court. ***Section 76 A (1)*** of the ***Land Act 1998 (Cap.227)*** is very specific when it provides that the Parish or Ward Executive Committee Courts are courts of first instance in respect of land disputes.

On the other hand, the ***Interpretation Act (Cap 3), Section 13 (1)*** thereof provides –

***“where this Act or any Act repeals and re-enacts, with or without modification, any provision of a former Act, reference in any other enactment to the provisions so repealed, shall, unless the contrary intention appears, be construed as reference to the provisions so re-enacted.”***

The ***Local Council Courts Act (Act 13/2006)*** which repealed the ***Executive Committee (Judicial Powers) Act*** under its ***Section 50 (1)*** has re-enacted, with slight modification, the provisions of ***Section 5*** of the ***Executive Committee (Judicial Powers) Act***; into ***Section 10 (1)*** with slight modification. The ***Land Act (as amended by Act No. 1/2004)*** in ***Section 76 A (1)*** made express provisions in reference to ***Section 5*** (among others) of the ***Executive Committee (Judicial Powers) Act***, and went ahead to modify it by providing that the Parish or Ward Executive Committee Courts would be the courts of first instance in respect of land disputes. Therefore, according to ***Section 13 (1)*** of the ***Interpretation Act (Cap 3)*** reference in ***Section 76 A (1)*** of the ***Land Act*** to ***Section 5*** of the ***Executive Committee (Judicial Powers) Act (now repealed)*** should, unless the contrary intention appear, be construed as references to the provisions so re-enacted.”

In the instant case the reference is made to ***Section 10 (1)*** of the ***Local Council Courts Act***. This is so given that ***Section 10 (1) (Supra)*** states that:-

***“Subject to the provisions of this Act and of any other written law, every local council court shall have jurisdiction...”***

In my opinion, it means the legal jurisdiction of LC courts under *Act 13/2006* was made subject to provisions of “*any other written law*”. The *Interpretation Act (Cap 13) Item (VVV)* defines “*written law*” to mean the Constitutional Instruments, Acts, Statutory instruments and any other Legislative instrument having effect in Uganda. It is again my considered view that a good example of such “other written law” would be *Section 76 A (1)* of the *Land Act(supra)*. The Parish or Ward Executive Committee Courts are now called *Parish Local Council Courts* established by *Section 3* of the *Local Council Courts Act*.

The *Land Act (Cap 227)*, in its *Part V*, established Land Tribunals which were supposed to take over the hearing and determination of disputes relating to land matters from the Magistrate’s and Local Council Courts. However, by *Section 39*, the *Land (Amendment Act (Act 1 of 2004))* amended *Section 95* of the *Land Act (Cap.227)* by substituting for *subsection (7)* a new one. *Sub-section (7) of section 95* now provides that-

***“(7) In each district, until a District Land Tribunal is established and commences to operate under this Act Magistrate’s Courts shall continue to have jurisdiction in land matters as they had immediately before commenced of this Act.”***

It is important to note that under the previous *subsection (7)* of *Section 95* of the *Land Act*, Executive Committee Courts were permitted to exercise jurisdiction which they had immediately before 2/7/2000 to try and determine land disputes. However, the new *subsection (7)* of *Section 95* deliberately omitted mention of the Executive Committee Courts. In my view, this did not mean that with effect from 18/03/2004 (the date of commencement of the amending Act) the Executive Committee Courts ceased to have jurisdiction in land matters. I am fortified in this view by the *Land (Amendment) Act, Section 30* which introduced a new Section; *Section 76 A (1)* which modified the *Executive Committee (Judicial Power) Act (Cap 8)* by stating that the Parish or Ward Executive Committee Courts would be the courts of first instance in respect of land disputes. I believe that, that amendment clarified the position very well.

Worth noting also is the fact that on 1/12/2006, the Hon. The Chief Justice issued a *Practice Direction No. 1/2006* (published on 1/12/2006) directing Magistrates Courts presided over by

Magistrate Grade One and above to exercise jurisdiction over land matters in accordance with **Section 95 (7)** of the **Land Act**(supra). This **Practice Direction** came almost six months after the **Local Council Courts’ Act, 2006** had commenced operation on 8/06/2006. There was no mention of Local Council Courts over land matters in the **Practice Direction**. Be that as it may, one thing that is clear is that the **Land Act (Cap 227)** is a special Act dealing with the jurisdiction of courts below the High Court, over land matters. While the **Local Council Act** maybe a later legislation, its provisions which are inconsistent with **Section 76 A (1) and (1)** of the **Land Act** must be read subject to the provisions of the **Land Act**.

It is my view that provisions of the **Land Act** were intended to modify the provisions of the **Executive Committee (Judicial Powers) Act (supra)** with regard to jurisdiction over land disputes and the forum of appeals from Division or Sub-County Executive Committee Courts. The **Local Council Courts Act** has by, it’s **Section 10 (1) (b)** regarding “legal jurisdiction”, and **Section 32 (2) (c)** regarding the right of appeal, re-enacted with slight modification the provisions which were contained in **Section 5 (1) (b)** on jurisdiction, and **Section 28 (2) (c)** on appeals, in the **Executive Committees (Judicial Powers) Act (Cap 8)**, now repealed. Therefore, according to **Section 13 (1)** of the **Interpretation Act (supra)** on “effect of repeal”, references by **Land Act, Section 76 A (1) and (2)** to the provisions so repealed have to be construed as references to the provisions so re-enacted, that is; **Section 10 (1) (b)** and **Section 32 (2) (c) of Local Council Courts Act**).

I am acutely aware of the principles of construction which require that an earlier Act stands impliedly repealed by a later Act. *See Kariapper vs. Wijesinha [1968] AC 716*, which was followed by the Court of Appeal of Uganda in **Civil Appeal No. 12 of 1985** between **David Ssejaaka Nalima and Rebecca Musoke, per Odoki, J.A. (as he then was)**. In that case, the Learned Justices of Appeal agreed with the foretasted statement of the principles of construction of statutes. I am of the strong view, however, that situation in the instant case is properly covered by **Section 13 (1)** of the **Interpretation Act (Cap 3)**. This is so because the general principles of construction of statutes would not apply where the local interpretation Act provides for a specific situation. I will conclude the above point by stating that **Section 10 (1) (b)** and **(e)** and **Section 32 (2) (c)** of the **Local Council Courts’ Act (2006)** have to be construed subject to

the provisions of **Section 76 A (1) and (2)** of the **Land Act (Cap 277)**, because the provisions contained in **Sections 10 and 32 (supra)** are expressed to be subject to the provisions of any other written law. Accordingly, a Local Council Court established at the village level has no jurisdiction to try and determine land disputes or matters relating to land. **Section 76 A (1) and (2) of the Land Act(Cap.227)** have to be read with all the necessary modifications and/or adoptions in light of changes in names of courts established under the **Local Council Courts Act, 2006**.

The next issue to determine is the effect is of the decision of Bukiro LCI Court. It is now settled that if a court lacks jurisdiction over a subject matter, its judgment and orders, however precisely certain and technically correct are mere nullities, and not only voidable. They are void and of no legal effect, and may not only be set aside any time by the court in which they are rendered, but declared void by every court in which they may be presented. *See Assanand and Sons (U) Ltd. Vs. East African Records Ltd, [1959] EA 360; Imelda Ndiwalungi vs. Roy Busulwa & Another [1997] HCB 74.*

The above being the position, it follows that the LC1 court's decision in the matter was null and void, and the Chief Magistrate's court presided over by His Worship Rwatooro Baker, should not have sanctioned the decision and given it any effect. *See also the case of Godfrey Ojwang vs. Wilson Bangonva [2005] 2 ULSR 196*, which is to the effect that a court of law cannot sanction an illegality. Similarly, once an illegality is brought to the attention of court, none of the parties can benefit from it. *See Re Milton Obote Foundation & Re. An Application [1997] HCB 79; Makula International Ltd. Vs. Cardinal Nsubuga [1981] HCB 11.*

I, therefore, declare the judgment of the LCI Court of Bukiro in respect of this matter as null and void. This equally takes care of the issue of whether or not the Chief Magistrate, Mr. Rwatooro Baker, was right to grant the consent to execute the LCI court's judgment. A null and void judgment cannot legally be executed because there is no judgment to speak of in the first place.

The third issue in this case is whether or not, the agreement between the parties on 16/06/2008 before Her Worship Nabaasa Ruth has any legal effect. It is noted from the record of the

proceedings that parties reached an agreement that the Plaintiff refunds the purchase price of shs. 1,700,000/= at an interest rate of 15% *per annum*, from the date of purchase up to the date of the agreement. The interest was in recognition of some developments the 1<sup>st</sup> defendant had put on the land. The total amount was calculated at Shs. 3,740,000= which was to be paid in installments to be agreed upon by the parties. The agreement was, according to the record of proceedings, reached in presence of the 1<sup>st</sup> Defendant's Counsel Mr. Bwatota, and before the trial Magistrate aforementioned.

Following upon the agreement, on 30/06/2008, the Plaintiff deposited Shs. 1,700,000= as a first installment with the court cashier on orders of the Magistrate. Later on 24/11/2008, the 1<sup>st</sup> Defendant wrote to Court a letter referring to the agreement, stating that he had not received the refund of Shs. 3,740,000 as agreed. Acting on this complaint, His Worship Rwatooro Baker, the Chief Magistrate then wrote advising the 1<sup>st</sup> Defendant to apply for execution of the consent judgment of 16/06/2008. The 1<sup>st</sup> Defendant on 16/12/2008 applied through M/s Dhabangi & Co. Advocates for execution of the Decree; i.e. the consent judgment of 16/06/2008. It is, therefore, my view that given the elements of the agreement between the parties before court, it amounted to a consent judgment, which could be given effect by court. In *Harjit Singh Mangat vs. Christine Lillian Nakitto & 2 others, H.C Civil Suit No. 442/2003 (Commercial Court Decision) Kiryabwire J.* stated as follows:-

***“A consent judgment between parties does present a resolution of the dispute as between them and should not be seen in the same light as a default judgment.”***

I believe this is the correct statement of the law. Similarly, under **Section 114** of the **Evidence Act (Cap 6)** states:-

***“when one person has, by his/her declaration, Act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither her or she nor his or had representative shall be allowed, in any suit between himself or herself or that person or his or her representative, to deny the truth of that thing”.***



Applying the same principles above to the instant case, the 1<sup>st</sup> defendant agreed to relinquish his rights to the disputed property and is deemed to have agreed to receive money as a refund. He could not turn around and be seen to be claiming land again. He could only sue for the balance of the refund money, but not to recover the land by executing the judgment of the LCI Court— which, as I have already stated, was null and void.

Lastly, I wish to pronounce on the legality of the orders issued by The Chief Magistrate, Her Worship Esta Nambayo, on 6/05/2009 and 12/01/2011. In the first date, the Chief Magistrate declared her predecessor's orders null and void; while in the latter she issued a warrant to put the Plaintiff into vacant possession of the disputed land pending orders and or directions of this court. In as much as the orders issued by His Worship Baker Rwatooro were illegal, the successor Chief Magistrate had no jurisdiction, whatsoever, to overturn the decision since the matter had not come to court on review or revision. In the latter instance, the power of revision is the exclusive domain of the High Court under **Section 83** of the **Civil Procedure Act (Cap.71)** while in the former instance of review it would require application made to the same court under **Order 45** of the **Civil Procedure Rules**. There is no evidence that such an application was ever made, and therefore, it was irregular for Her Worship Esta Nambayo to overrule the decision of her predecessor because it amounted to overruling herself, since the decision was by the same court. She could not legally issue such an order since the Chief Magistrate's court had become *functus officio* and it could not overturn, alter or change its decision on the matter. This court held in similar terms in the case of **Mbaya Janet vs. Katushabe Constance, Mbarara H.C Civ.Revision. No. 8/2010**; and has not departed from that position. Even if there was an error apparent on face of the record, the proper recourse would not be to overturn the earlier decision but, probably, to review the decision, if it required such an option. I have already pronounced on the position of review in this matter and will not repeat it.

The net effect is that the decisions of the Chief Magistrate's court are revised with the following orders and /directions.

- (a) The judgment of Bukirio LCI Court is null and void.

- (b) The decision of the Chief Magistrate, His Worship Baker Rwatooro, of putting the 1<sup>st</sup> Defendant into vacant possession of the disputed land was illegal; and it is hereby set aside.
- (c) The decision of the Chief Magistrate, Her Worship Esta Nambayo, of overturning her predecessor's decision is irregular, and is hereby set aside.

It is further directed that:-

- (a) The Plaintiff retains occupation/possession of the suit property; and;
- (b) The Plaintiff pays the balance of Shs. 3,740,000= to the 1<sup>st</sup> Defendant not later than thirty (30 days) from the date of this ruling.
- (c) Failure by the Plaintiff to comply with direction (b) above, the 1<sup>st</sup> Defendant will be at liberty to sue for the balance with attendant interest and costs.

***BASHAIJA K. ANDREW***

***J U D G E***

***18/04/2012.***